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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 UNIVERSAL MUSIC AB, a Sweden
limited company; and JOHN
12 ENGELBERT, an individual,

13 Plaintiffs,

14 v.

15 VUORI, INC., a Delaware corporation;
and DOES 1 through 10, inclusive,
16

17 Defendants.
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CASE NO. 2:22-cv-06538 AB (ASx)

The Honorable Andre Birotte, Jr.

PROTECTIVE ORDER

[Discovery Document: Referred to
Magistrate Judge Alka Sagar]

Filed: September 13, 2022
Trial: March 12, 2024

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
12 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve trade secrets, customer and pricing lists and
17 other valuable research, development, commercial, financial, technical and/or
18 proprietary information for which special protection from public disclosure and
19 from use for any purpose other than prosecution of this action is warranted.
20 Such confidential and proprietary materials and information consist of, among
21 other things, confidential business or financial information, information regarding
22 confidential business practices, or other confidential research, development, or
23 commercial information (including information implicating privacy rights of third
24 parties), information otherwise generally unavailable to the public, or which may
25 be privileged or otherwise protected from disclosure under state or federal statutes,
26 court rules, case decisions, or common law. Accordingly, to expedite the flow of
27 information, to facilitate the prompt resolution of disputes over confidentiality of
28 discovery materials, to adequately protect information the parties are entitled to

1 keep confidential, to ensure that the parties are permitted reasonable necessary
 2 uses of such material in preparation for and in the conduct of trial, to address their
 3 handling at the end of the litigation, and serve the ends of justice, a protective order
 4 for such information is justified in this matter. It is the intent of the parties that
 5 information will not be designated as confidential for tactical reasons and that
 6 nothing be so designated without a good faith belief that it has been maintained in
 7 a confidential, non-public manner, and there is good cause why it should not be
 8 part of the public record of this case.

9 2. DEFINITIONS

10 2.1 Action: The instant action, *Universal Music AB, et al. v. Vuori, Inc.*,
 11 C.D. Cal. Case No. 2:22-cv-06538 AB (ASx).

12 2.2 Challenging Party: a Party or Non-Party that challenges the
 13 designation of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
 15 how it is generated, stored or maintained) or tangible things that qualify for
 16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
 17 the Good Cause Statement.

18 2.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
 19 Information or Items: extremely sensitive “CONFIDENTIAL” Information or
 20 Items, the disclosure of which to another Party or Non-Party would create a
 21 substantial risk of serious harm that could not be avoided by less restrictive means.

22 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
 23 their support staff).

24 2.6 Designating Party: a Party or Non-Party that designates information or
 25 items that it produces in disclosures or in responses to discovery as
 26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 27 ONLY.”

1 2.7 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced
4 or generated in disclosures or responses to discovery in this matter.

5 2.8 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve
7 as an expert witness or as a consultant in this Action.

8 2.9 House Counsel: attorneys who are employees of a party to this Action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.10 Non-Party: any natural person, partnership, corporation, association,
12 or other legal entity not named as a Party to this action.

13 2.11 Outside Counsel of Record: attorneys who are not employees of a
14 party to this Action but are retained to represent or advise a party to this Action
15 and have appeared in this Action on behalf of that party or are affiliated with a law
16 firm which has appeared on behalf of that party, and includes support staff.

17 2.12 Party: any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

22 2.14 Professional Vendors: persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 2.15 Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL” or HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY.”

1 2.16 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.

9 Any use of Protected Material during a court hearing or at trial shall be
10 governed by the orders of the trial judge. This Order does not govern the use of
11 Protected Material during a court hearing or at trial.

12 4. DURATION

13 Even after final disposition of this litigation, the confidentiality obligations
14 imposed by this Order shall remain in effect until a Designating Party agrees
15 otherwise in writing or a court order otherwise directs. Final disposition shall be
16 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
17 with or without prejudice; and (2) final judgment herein after the completion and
18 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
19 including the time limits for filing any motions or applications for extension of
20 time pursuant to applicable law.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection.

23 Each Party or Non-Party that designates information or items for protection under
24 this Order must take care to limit any such designation to specific material that
25 qualifies under the appropriate standards. The Designating Party must designate
26 for protection only those parts of material, documents, items, or oral or written
27 communications that qualify so that other portions of the material, documents,
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1 items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited.
4 Designations that are shown to be clearly unjustified or that have been made for an
5 improper purpose (e.g., to unnecessarily encumber the case development process
6 or to impose unnecessary expenses and burdens on other parties) may expose the
7 Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the inapplicable designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the Producing Party affix at a minimum, the legend
20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
21 ONLY", to each page that contains protected material. If the information is
22 contained in a file format that does not reasonably allow for the affixing of such
23 legend, then the Producing Party may designate for the protection the information
24 within such file by stating such designation via the transmittal e-mail or letter, or
25 by producing a slip sheet in its production which identifies the bates number of the
26 file in question and the confidentiality designation for that file.

27 A Party or Non-Party that makes original documents available for inspection
28 need not designate them for protection until after the inspecting Party has indicated

1 which documents it would like copied and produced. During the inspection and
2 before the designation, all of the material made available for inspection shall be
3 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
4 inspecting Party has identified the documents it wants copied and produced, the
5 Producing Party must determine which documents, or portions thereof, qualify for
6 protection under this Order. Then, before producing the specified documents, the
7 Producing Party must affix the “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to each page that
9 contains Protected Material.

10 (b) for testimony given in depositions that the Designating Party
11 identifies on the record, before the close of the deposition as protected testimony,
12 or within fifteen (15) business days after receipt of a final, certified transcript. All
13 depositions shall presumptively be treated as CONFIDENTIAL until the end of
14 such fifteen (15) business-day period.

15 (c) for information produced in some form other than documentary and
16 for any other tangible items, that the Producing Party affix in a prominent place on
17 the exterior of the container or containers in which the information is stored the
18 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
19 EYES ONLY.”

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
21 failure to designate qualified information or items does not, standing alone, waive
22 the Designating Party’s right to secure protection under this Order for such
23 material. Upon timely correction of a designation, the Receiving Party must make
24 reasonable efforts to assure that the material is treated in accordance with the
25 provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the informal
6 dispute resolution process set forth in the Court's Procedures and Schedules. see
7 <http://www.cacd.uscourts.gov/honorable-alka-sagar>

8 6.3 The burden of persuasion in any such challenge proceeding shall be
9 on the Designating Party. Frivolous challenges, and those made for an improper
10 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
11 parties) may expose the Challenging Party to sanctions. Unless the Designating
12 Party has waived or withdrawn the confidentiality designation, all parties shall
13 continue to afford the material in question the level of protection to which it is
14 entitled under the Producing Party's designation until the Court rules on the
15 challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that
18 is disclosed or produced by another Party or by a Non-Party in connection with this
19 Action only for prosecuting, defending, or attempting to settle this Action.
20 Such Protected Material may be disclosed only to the categories of persons and
21 under the conditions described in this Order. When the Action has been
22 terminated, a Receiving Party must comply with the provisions of section 13 below
23 (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated

2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
4 well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this Action;

6 (b) the officers, directors, and employees (including House Counsel) of
7 the Receiving Party to whom disclosure is reasonably necessary for this Action;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) private court reporters and their staff to whom disclosure is reasonably
13 necessary for this Action and who have signed the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A);

15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (g) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information;

20 (h) during their depositions, witnesses, and attorneys for witnesses, in the
21 Action to whom disclosure is reasonably necessary provided that the witness: (1)
22 signs the form attached as Exhibit A hereto; and (2) does not keep any confidential
23 information, unless otherwise agreed by the Designating Party or ordered by the
24 court. Pages of transcribed deposition testimony or exhibits to depositions that
25 reveal Protected Material may be separately bound by the court reporter and may
26 not be disclosed to anyone except as permitted under this Stipulated Protective
27 Order; and

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(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court and its personnel;

(d) private court reporters and their staff to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(g) any mediator or settlement officer, and their supporting personnel mutually agreed upon by any of the parties engaged in settlement discussions.

For the avoidance of doubt, any information of item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” may not be disclosed to the Receiving Party’s House Counsel unless the Receiving Party’s House Counsel satisfies the criteria of 7.3(f).

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
 4 that compels disclosure of any information or items designated in this Action as
 5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 6 ONLY,” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification
 8 shall include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order
 10 to issue in the other litigation that some or all of the material covered by the
 11 subpoena or order is subject to this Protective Order. Such notification shall
 12 include a copy of this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to be
 14 pursued by the Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served
 16 with the subpoena or court order shall not produce any information designated in
 17 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 18 ATTORNEYS’ EYES ONLY” before a determination by the court from which the
 19 subpoena or order issued, unless the Party has obtained the Designating Party’s
 20 permission. The Designating Party shall bear the burden and expense of seeking
 21 protection in that court of its confidential material and nothing in these provisions
 22 should be construed as authorizing or encouraging a Receiving Party in this Action
 23 to disobey a lawful directive from another court.

24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 25 PRODUCED IN THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced by a
 27 Non-Party in this Action and designated as “CONFIDENTIAL” or HIGHLY
 28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced

1 by Non-Parties in connection with this litigation is protected by the remedies and
2 relief provided by this Order. Nothing in these provisions should be construed as
3 prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party is
6 subject to an agreement with the Non-Party not to produce the Non-Party's
7 confidential information, then the Party shall:

8 (1) reasonably promptly notify in writing the Requesting Party and
9 the Non-Party that some or all of the information requested is subject to a
10 confidentiality agreement with a Non-Party;

11 (2) reasonably promptly provide the Non-Party with a copy of the
12 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
13 reasonably specific description of the information requested; and

14 (3) make the information requested available for inspection by the
15 Non-Party, if requested.

16 (c) If the Non-Party fails to seek a protective order from this court within
17 14 days of receiving the notice and accompanying information, the Receiving
18 Party may produce the Non-Party's confidential information responsive to the
19 discovery request. If the Non-Party timely seeks a protective order, the Receiving
20 Party shall not produce any information in its possession or control that is subject
21 to the confidentiality agreement with the Non-Party before a determination by the
22 court. Absent a court order to the contrary, the Non-Party shall bear the burden
23 and expense of seeking protection in this court of its Protected Material.

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized
27 under this Stipulated Protective Order, the Receiving Party must immediately (a)
28 notify in writing the Designating Party of the unauthorized disclosures, (b) use its

1 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
2 the person or persons to whom unauthorized disclosures were made of all the terms
3 of this Order, and (d) request such person or persons to execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
5 Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
9 inadvertently produced material is subject to a claim of privilege or other
10 protection, the obligations of the Receiving Parties are those set forth in Federal
11 Rule of Civil Procedure 26(b)(5)(B).

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of
14 any person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to
17 disclosing or producing any information or item on any ground not addressed in
18 this Stipulated Protective Order. Similarly, no Party waives any right to object on
19 any ground to use in evidence of any of the material covered by this Protective
20 Order.

21 12.3 Filing Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Civil Local Rule 79-5. Protected Material
23 may only be filed under seal pursuant to a court order authorizing the sealing of the
24 specific Protected Material at issue. If a Party's request to file Protected Material
25 under seal is denied by the court, then the Receiving Party may file the information
26 in the public record unless otherwise instructed by the court.

27 13. FINAL DISPOSITION
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1 After the final disposition of this Action, as defined in paragraph 4, within
2 60 days of a written request by the Designating Party, each Receiving Party must
3 return all Protected Material to the Producing Party or destroy such material. As
4 used in this subdivision, “all Protected Material” includes all copies, abstracts,
5 compilations, summaries, and any other format reproducing or capturing any of the
6 Protected Material. Whether the Protected Material is returned or destroyed, the
7 Receiving Party must submit a written certification to the Producing Party (and, if
8 not the same person or entity, to the Designating Party) by the 60 day deadline that
9 (1) identifies (by category, where appropriate) all the Protected Material that was
10 returned or destroyed and (2) affirms that the Receiving Party has not retained any
11 copies, abstracts, compilations, summaries or any other format reproducing or
12 capturing any of the Protected Material. Notwithstanding this provision, Counsel
13 are entitled to retain an archival copy of all pleadings, motion papers, trial,
14 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
15 and trial exhibits, expert reports, attorney work product, and consultant and expert
16 work product, even if such materials contain Protected Material. Any such
17 archival copies that contain or constitute Protected Material remain subject to this
18 Protective Order as set forth in Section 4 (DURATION).

19 14. Any violation of this Order may be punished by any and all appropriate
20 measures including, without limitation, contempt proceedings and/or monetary
21 sanctions.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: March 29, 2023

DAVID A. STEINBERG
GABRIELLA N. ISMAJ
MITCHELL SILBERBERG & KNUPP LLP

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6 By: /s/ Gabriella N. Ismaj
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10 DATED: March 29, 2023

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13 By: /s/ Daniel M. Petrocelli
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Attorneys for Defendant
Vuori, Inc.

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18 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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20 DATED: March 30, 2023

/ s / Sagar
Honorable Alka Sagar
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California in the case of *Universal Music AB, et al. v. Vuori, Inc.*, C.D. Cal. Case No. 2:22-cv-06538 AB (ASx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____